

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
CROWN UNLIMITED MACHINE, INC. ) CASE NO. 03-13400  
 )  
Debtor )

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on November 4, 2005

Although it is usually creditors who file claims in bankruptcy cases, they are not the only ones who may do so. Under appropriate circumstances, the debtor, a co-obligor, or even the bankruptcy trustee may file a claim on a creditor's behalf. See, 11 U.S.C. § 501(b), (c). That is what happened here. The trustee has filed a claim on behalf of one of the debtor's creditors, Community Products, LLC, for more than \$128,000. Another creditor, Crown Stock Distribution, Inc., has objected to this claim for a variety of reasons; an objection the trustee opposes. That is the dispute before the court – Crown Stock's objection to the claim the trustee filed on behalf of Community Products and the trustee's response thereto.<sup>1</sup>

The matter is presently before the court on Crown Stock's motion for summary judgment and the trustee's response thereto. The motion argues, inter alia, that the Community Products claim was filed after the deadline for doing so had passed, is late, and should therefore be denied.<sup>2</sup> The trustee

---

<sup>1</sup>Community Products, who will be the ultimate winner or loser in this dispute, is apparently content to let the trustee fight its battles for it. Although it was served with a copy of Crown Stock's objection and notice of the opportunity to respond, it failed to do so. The only response to the objection is the one filed by the trustee.

<sup>2</sup>The motion also argues that the trustee has acted improperly and filed the claim simply to create standing in order to bring a fraudulent transfer action against Crown Stock pursuant to § 544(b), which allows the trustee to avoid transfers that are avoidable by an actual creditor of the

opposes the motion with two arguments. First, that Community Products had no notice of the bankruptcy and, therefore, the claim should not be regarded as late and second, that Crown Stock lacks standing to object to the claim.

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Bankr. P. Rule 7056(c); Fed. R. Civ. P. Rule 56(c). Here, the material facts are not in dispute. The debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on July 28, 2003 and the case was ultimately converted to Chapter 7 on May 18, 2004. In connection with the conversion, a meeting of creditors was scheduled for July 7, 2004, and a deadline of October 9, 2004 was set for the filing of any proofs of claim. Community Products did not file a claim and, on December 1, 2004, the trustee filed one

---

debtor. The argument suggests that Crown’s own motivation may be suspect and that it has filed the objection, not for the purpose of increasing any distribution it may receive as a creditor of the estate, but, in an effort to minimize its liability to the estate and defeat the trustee’s fraudulent conveyance action by somehow undermining his right to bring that action. Counsel is apparently working from the assumption that for a trustee to exercise the rights given by § 544(b)(1), the creditor whose rights the trustee asserts must hold an allowed claim, and if that creditor’s claim is denied for any reason whatsoever the trustee’s rights under §544(b)(1) evaporate. If so, counsel would be in error.

Section 544(b)(1) permits the trustee to exercise the rights of “a creditor holding an unsecured claim that is allowable.” 11 U.S.C. § 544(b)(1)(emphasis added). It does not require that claim to be allowed. The only prerequisite to having an allowable claim is that the creditor have a right to payment. 11 U.S.C. § 101(5). In other words, the creditor must be owed money as of the date of the petition. See, 11 U.S.C. § 502(b). Admittedly, for a claim to actually be allowed requires a proof of claim, 11 U.S.C § 502(a), but allowed and allowable do not have the same meaning and a creditor might fail to have an allowed claim for reasons that have nothing to do with whether it was owed money by the debtor, see, 11U.S.C. § 502(b)(1) - (9), (d), including the failure to file. When Congress wanted rights to turn on whether a claim had actually been “allowed” it said so, see e.g., 11 U.S.C. §§ 506(a), 1325(a)(4), (5), (b)(1), and it did not used that term in § 544(b). In order to proceed under § 544(b)(1) the trustee only needs to identify a creditor holding an allowable claim – a creditor that is owed money as of the date of the petition – not one whose claim has actually been allowed. Cf., In re Michelex, Ltd., 195 B.R. 993, 1001 (Bankr. W.D. Mich. 1996). Thus, motive – whether the trustee’s in filing the claim or Crown Stock’s in objecting to it – does not matter.

on its behalf – an unsecured non-priority claim in the amount of \$128,584.47.

Crown Stock argues the proof of claim the trustee filed on behalf of Community Products is late. Whether or not this is so is determined by a simple reference to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. The Bankruptcy Code specifies who may file a proof of claim and the Rules of Procedure supply the deadlines for doing so. The initial responsibility for filing a claim is, not surprisingly, placed upon the debtor's creditors. 11 U.S.C. § 501(a). In a Chapter 7 case, with few exceptions, to be timely, a creditor must file its claim "not later than 90 days after the first date set for the meeting of creditors." Fed. R. Bankr. P. Rule 3001(c). If a creditor does not file its claim within the time required, the trustee may file one on its behalf. 11 U.S.C. § 501(c). Rule 3004 of the Federal Rules of Bankruptcy Procedure provides the deadline by which the trustee may do so. If the trustee is going to file a claim on behalf of a creditor, the trustee must do so "within 30 days after the expiration of the [claims bar date]." Fed. R. Bankr. P. Rule 3004.

Here, the deadline for creditors to file their proofs of claim was October 9, 2004. If any of them did not do so, the trustee had until 30 days after that date to file claims on their behalf. The claim the trustee filed on behalf of Community Products was not filed until December 1, 2004. There can be no doubt about it, that claim is late.

Once filed, a proof of claim is deemed allowed, unless objected to. 11 U.S.C. § 502(a). If an objection is filed, the court is directed to determine the amount due as of the date of the petition and allow the claim in that amount "except to the extent that" one or more of the reasons stated in the statute can be found to exist. 11 U.S.C. § 502(b). Among the enumerated reasons for not allowing a claim is the fact that the proof of claim was "not timely filed, except to the extent tardily

filed as permitted under paragraph (1), (2), or (3) of section 726(a).” 11 U.S.C. § 502(b)(9). Consequently, unless § 726(a)(1), (2), or (3) would permit a late claim to share in a distribution from the estate, the claim the trustee filed on behalf of Community Products cannot be allowed.

Section 726(a)(1) deals only with priority claims – those specified in § 507 – so it has no applicability to Community Products’ non-priority claim. Section 726(a)(2) does allow some late claims to share in a distribution from the estate but only if the claim was “filed under section 501(a)” – in other words filed by the creditor itself – and the creditor did not have notice or knowledge of the claims bar date. 11 U.S.C. § 726(a)(2)(C). Since we are dealing with a claim filed by the trustee – a claim filed under § 502(c) – this exception does not apply. Finally, there is § 726(a)(3) which allows late claims to receive a distribution from the estate if the claims in the two prior categories have been paid in full. Yet, here too, it is only the claims “filed under section 501(a)” that qualify for this treatment, so it has no application to this case. Thus, although late claims filed by creditors do have an opportunity to share in a distribution from the bankruptcy estate, late claims filed by others – including the trustee – do not. In re Drew, 256 B.R. 799, 804-05 (10th Cir. BAP 2001); In re Danielson, 981 F.2d 296, 298 (7th Cir. 1992).

The trustee has also advanced equitable arguments aimed at trying to persuade the court to disregard the deadlines established by the Bankruptcy Rules and their statutory consequences. Chief among them is the argument that Community Products did not receive notice of the case in time to file a timely proof of claim. In light of the clarity of the statute and the rules of procedure, such pleas to equity are unavailing. Danielson, 981 F.2d at 298-99. Furthermore, whether or not Community Products had appropriate notice of this case in order to file a timely proof of claim is not relevant when are talking about a proof of claim filed by the trustee. If the late claim in question had been

filed by the creditor, § 726(a)(2)(C) clearly makes the creditor's notice of the case a relevant inquiry and the apparent inequity of binding someone to a deadline they were never apprised of is clearly the basis for that portion of the Bankruptcy Code. Nonetheless, regardless of what Community Products did or did not know about this case and the claims bar date, there can be no doubt that the trustee knew and there is no inequity in requiring the trustee to observe the applicable deadlines. Quite simply, there are different rules for claims filed by creditors and those filed by the trustee. See, In re Ford, 205 B.R. 960, 964 (Bankr. N.D. Ala. 1996).

The trustee's final argument is that Crown Stock lacks standing to object to the Community Products claim. Section 502(a) of the Bankruptcy Code allows "a party in interest" to object to claims that have been filed against the estate. 11 U.S.C. § 502(a). To be a party in interest in a bankruptcy proceeding generally requires one to have a pecuniary interest which will be affected by the order the court is asked to issue. See, Depoister v. Mary M. Holloway Foundation, 36 F.3d 582, 585 (7th Cir. 1994); Matter of Andreuccetti, 975 F.2d 413, 416 (7th Cir. 1992). Creditors usually fulfill this standard quite easily because many of the events that occur during the administration of a case will affect either the size of the estate or how it will be distributed and, thus, have an impact upon the distribution they may receive.

Crown Stock has filed a timely proof of claim and that claim has not been objected to, much less denied. In saying this, the court recognizes that the trustee has sued Crown Stock to recover an allegedly avoidable transfer and, if successful, that action may lay the foundation for a successful objection to the claim. See, 11 U.S.C. § 502(d). Despite what the future may bring, at the present time Crown Stock holds a claim against the estate which is deemed allowed. As such, it qualifies as a party in interest and has the same standing to participate in this proceeding as any other creditor.

Crown Stock Distribution's motion for summary judgment will be granted and claim No. 10 filed by the trustee on behalf of Community Products, LLC will be denied. An order doing so will be entered.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court